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| <p style="text-align: right;">Page 86</p> <p>1 earlier than that discussion of terminating the</p> <p>2 trust, or was that the first time that you looked</p> <p>3 into that?</p> <p>4 A. We had been considering it for some time, and it</p> <p>5 was soon after the various lawsuits had been filed</p> <p>6 that we felt we were in a position to follow through,</p> <p>7 and continue to look to distribute the assets to the</p> <p>8 trust beneficiaries, would be in the best interest of</p> <p>9 all the beneficiaries here. Short of that, a</p> <p>10 valuation of the Eber assets was a stumbling block.</p> <p>11 Q. Now, to the extent that you can, please walk me</p> <p>12 through your analysis in determining to terminating</p> <p>13 the trust was the best thing for the beneficiaries of</p> <p>14 the trust, in that situation?</p> <p>15 A. Well, in looking at ensuring that all of the</p> <p>16 beneficiaries and the step down here to the second</p> <p>17 and third generations who are receiving the assets,</p> <p>18 our determination was to ensure that assets get to</p> <p>19 the appropriate hands, rather than having much of it</p> <p>20 depleted by one sector -- one side of the family.</p> <p>21 And so, as we took a look at it, because we had</p> <p>22 assets that are non-marketable, we were looking at</p> <p>23 distributing and benefiting the family units</p> <p>24 themselves, the three family units, to the greatest</p> <p>25 extent to avoid any loss of value. And also, to</p> | <p style="text-align: right;">Page 88</p> <p>1 Q. The possibility of a claim --</p> <p>2 A. Okay.</p> <p>3 Q. -- factor into the determination that</p> <p>4 terminating the trust would be the best course for</p> <p>5 the beneficiaries?</p> <p>6 MR. O'BRIEN: If at all.</p> <p>7 MR. BROOK: If at all.</p> <p>8 A. If at all, it factored into the lack of ability</p> <p>9 to be able to provide a fair value for the stock. It</p> <p>10 would allow for the trustee to be able to distribute</p> <p>11 the stock to the beneficiaries, possibly equally, so,</p> <p>12 that they would be able to then reap any kind of</p> <p>13 benefit there, if there was a need to bring any kind</p> <p>14 of action.</p> <p>15 Q. So, is it --</p> <p>16 A. We felt our hands were tied, so to speak,</p> <p>17 because we were not -- we had two co-trustees that</p> <p>18 had an interest in this, and by looking to distribute</p> <p>19 to the beneficiaries, if there was a desire, then the</p> <p>20 beneficiaries could take appropriate action.</p> <p>21 Q. So, is it fair to say, that it factored into the</p> <p>22 decision in that, if an action was to be brought by</p> <p>23 terminating the trust, that action could be brought</p> <p>24 directly by the former beneficiaries, because they</p> <p>25 then owned the shares directly?</p> |
| <p style="text-align: right;">Page 87</p> <p>1 consider providing for those family members, because</p> <p>2 there had been a decrease and a loss in income coming</p> <p>3 from the other Eber assets.</p> <p>4 Q. Now, to what extent, if at all, did the</p> <p>5 possibility of filing a claim alleging a fraudulent</p> <p>6 transfer factor into your analysis of whether</p> <p>7 terminating the trust was beneficial for the</p> <p>8 beneficiaries?</p> <p>9 MR. O'BRIEN: Form.</p> <p>10 MR. RAMSEY: Form.</p> <p>11 A. To what extent -- can you restate the question,</p> <p>12 please?</p> <p>13 Q. Now, we had been talking a minute ago about the</p> <p>14 possibility of filing a claim on behalf of the trust,</p> <p>15 as the equity holder of the parents of the company</p> <p>16 had authorized the transfer here, whether there could</p> <p>17 be a claim filed there. And you said, rather than do</p> <p>18 that, the decision was made to terminate the trust.</p> <p>19 Is that a fair description?</p> <p>20 A. Yes.</p> <p>21 Q. So, how did that possibility of the filing of</p> <p>22 the claim factor into the determination that</p> <p>23 terminating the trust was beneficial for the</p> <p>24 beneficiaries?</p> <p>25 A. How did the --</p> | <p style="text-align: right;">Page 89</p> <p>1 A. They would be looking at owning the shares</p> <p>2 directly, yes.</p> <p>3 Q. If you would please turn to the fourth page of</p> <p>4 the Exhibit. It says at the top, minutes from</p> <p>5 meeting of Officers for the trust of Allen Eber, do</p> <p>6 you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And this is with the last three page numbers</p> <p>9 857. So, this refers to a meeting on August 18th,</p> <p>10 2011, do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. It says that Elliot Gumaer, Lester Eber, and</p> <p>13 Richard Hawks, trustees of the trust of Allen Eber,</p> <p>14 met at the Canandaigua National Bank in Rochester,</p> <p>15 New York, to discuss and ratify the actions of the</p> <p>16 subsidiaries as described below, and discuss other</p> <p>17 trust business. Is that a fair description of what</p> <p>18 happened during that meeting?</p> <p>19 A. At the meeting there were various forms that</p> <p>20 were presented --</p> <p>21 MR. CALIHAN: There were various what?</p> <p>22 A. Forms presented. The actual documentation and</p> <p>23 so forth was discussed, but I did not see specific</p> <p>24 references to the loans. We discussed the fact that</p> <p>25 there are several things that were going on here and</p> |

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| <p style="text-align: right;">Page 90</p> <p>1 needed to be done, but had nothing to do with -- the</p> <p>2 trustees had nothing to do with the determination of</p> <p>3 the various obligations.</p> <p>4 Q. Okay. So, just to make sure we are oriented</p> <p>5 here, so this is describing the meeting that occurred</p> <p>6 about ten months before the one we were looking at</p> <p>7 just a minute ago? So this is --</p> <p>8 A. Yes.</p> <p>9 MR. O'BRIEN: You mean the meeting?</p> <p>10 MR. BROOK: The meeting, yes.</p> <p>11 MR. O'BRIEN: The conference call meeting?</p> <p>12 MR. BROOK: Well, the other one was a</p> <p>13 conference call meeting, and this one was an in</p> <p>14 person meeting, except, I think it says here, if you</p> <p>15 look at the next sentence, that Gumaer participated</p> <p>16 by conference call, and it says Wendy Eber was also</p> <p>17 present to facilitate and document the discussion, is</p> <p>18 that correct?</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MR. BROOK:</p> <p>21 Q. And it says -- the next paragraph reads: The</p> <p>22 trustees ratified three loans made by Lester Eber to</p> <p>23 Eber Brothers Metro, Inc., do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. And is that a fair description of what took</p> | <p style="text-align: right;">Page 92</p> <p>1 on Lester's good will, he gave the money for the</p> <p>2 loan. The loans were ratified by Rick Hawks and Mike</p> <p>3 Gumaer, Lester Eber abstained. A copy of all the</p> <p>4 documents that relate to the loan was provided to</p> <p>5 Richard Hawks. Is that paragraph -- did I read that</p> <p>6 correctly, what's on the page? Just making sure, did</p> <p>7 I read that correctly?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And is, what I just read as described on</p> <p>10 the page, an accurate description of what took place</p> <p>11 during this meeting on August 18th, 2011?</p> <p>12 A. A copy of all the documents related to the loan</p> <p>13 was provided to me, did not occur at that time.</p> <p>14 Q. When, if ever, did that occur?</p> <p>15 A. It occurred after I made the next request which</p> <p>16 was at the meeting we had in January of the following</p> <p>17 year.</p> <p>18 MR. O'BRIEN: June.</p> <p>19 Q. You mean -- was it at the next meeting?</p> <p>20 A. The June 7th, okay.</p> <p>21 Q. Was there a meeting in between the August 2011</p> <p>22 and June 2012 meetings?</p> <p>23 A. No, I was taking the date off here, from the</p> <p>24 top, which came from Wendy, which was January 2nd, of</p> <p>25 '13 and it was actually June 7th of '12, when we had</p> |
| <p style="text-align: right;">Page 91</p> <p>1 place during that meeting?</p> <p>2 A. The trustees discussed that, it was -- I don't</p> <p>3 believe there was ever a vote taken at this meeting.</p> <p>4 Once again, it comes back to -- if you refer back to</p> <p>5 the --</p> <p>6 MR. O'BRIEN: You answered the question.</p> <p>7 THE WITNESS: Okay.</p> <p>8 Q. So, is it correct that you would not describe</p> <p>9 what occurred in that meeting as a ratification by</p> <p>10 you, of any loans that were made by Lester Eber to</p> <p>11 Eber Brothers Metro?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. I would not characterize it as a ratification,</p> <p>14 because for the first time, we are getting the</p> <p>15 information of what is happening here, which led to</p> <p>16 probably the second memo which was the first one here</p> <p>17 --</p> <p>18 Q. Minutes.</p> <p>19 A. -- or minutes, which I had requested information</p> <p>20 which I had not received.</p> <p>21 Q. So, jumping down some to the fourth paragraph,</p> <p>22 it says: After a lengthy discussion about how all the</p> <p>23 income beneficiaries and third parties were offered</p> <p>24 the opportunity to participate in the February 26th,</p> <p>25 2010 loan, but they all declined, and that only based</p> | <p style="text-align: right;">Page 93</p> <p>1 the second meeting, but the first meeting was in</p> <p>2 August of 2011. And that's when I -- this</p> <p>3 information was first provided to us, the second</p> <p>4 meeting was Mike talking about the changes that were</p> <p>5 taking place I'd requested copies of the judicial</p> <p>6 decision summary, and information that had not been</p> <p>7 provided which actually went back to the previous</p> <p>8 meeting, and did not -- had not received.</p> <p>9 Q. And continuing on the issue you raised of</p> <p>10 requesting information, if you look at the last</p> <p>11 paragraph, the third sentence, it says something --</p> <p>12 it appears to be related to the above issues, it says</p> <p>13 quote, Rick requested copies of the operating</p> <p>14 statement for Eber-CT to determine the value of the</p> <p>15 Corporation, they are hereto attached. Is that</p> <p>16 correct, that you requested a statement for Eber</p> <p>17 Connecticut?</p> <p>18 A. I would have requested information from Eber</p> <p>19 Brothers and at that time, if Eber Connecticut was</p> <p>20 the lending from the commercial side, what our</p> <p>21 lending entity was, I was looking to determine</p> <p>22 whether or not the liability of the organization.</p> <p>23 Q. And did you ever actually receive the statement</p> <p>24 that you requested?</p> <p>25 A. Not in the form that I would normally expect it</p> |

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| <p style="text-align: right;">Page 138</p> <p>1 copy of all documents related to the loan was</p> <p>2 provided to you, do you recall being provided with</p> <p>3 those documents at any point?</p> <p>4 A. After the fact, after the second meeting, we did</p> <p>5 get some of those documents, and some of them</p> <p>6 actually came from our own commercial lending area</p> <p>7 who had received them.</p> <p>8 Q. And the second meeting is the June 12th, year</p> <p>9 2012 meeting?</p> <p>10 A. Yes.</p> <p>11 Q. Is there a reason that you didn't follow up, or</p> <p>12 push harder to get those documents sooner than June</p> <p>13 of 2012?</p> <p>14 A. We did not see a reason set forth other than the</p> <p>15 fact we were not aware of a corporate structure</p> <p>16 change until we had been informed of that by Mike</p> <p>17 Gumaer later on.</p> <p>18 Q. Do you recall following up at all to request</p> <p>19 those documents prior to the June 2012 meeting?</p> <p>20 A. I would say verbally we had requested it a</p> <p>21 couple of times directly from Wendy.</p> <p>22 Q. Do you know whether you ever reduced that</p> <p>23 request to writing?</p> <p>24 A. No.</p> <p>25 Q. You didn't or you don't recall?</p> | <p style="text-align: right;">Page 140</p> <p>1 did, okay. Long time ago.</p> <p>2 Q. Understood. The last couple sentences there</p> <p>3 talk about a request by Sally Kleeberg for payment of</p> <p>4 medical expenses. I know you were asked a couple</p> <p>5 questions about this earlier, do you recall Lester</p> <p>6 ever paying -- Lester or the trust ever paying</p> <p>7 Sally's medical expenses?</p> <p>8 A. The trust never paid, I'm not sure about Lester.</p> <p>9 As I told you, there was a period of time when things</p> <p>10 were closing down with Eber Brothers, and certain</p> <p>11 people have been either laid off, or were no longer</p> <p>12 with the organization, and Lester did pick up two to</p> <p>13 three years of medical expenses and medical insurance</p> <p>14 for some of the family members who had actually</p> <p>15 worked for the organization, and then, I believe it</p> <p>16 was in 2011, he discontinued that.</p> <p>17 Q. Okay. So, the money came from Lester</p> <p>18 personally, not from the trust?</p> <p>19 A. Money never came from the trust.</p> <p>20 Q. When is the first time you recall seeing a copy</p> <p>21 of these meeting minutes?</p> <p>22 A. My first recollection would be sometime shortly</p> <p>23 after our June meeting.</p> <p>24 Q. At that point, based on your testimony earlier,</p> <p>25 you indicated that you didn't believe -- you didn't</p> |
| <p style="text-align: right;">Page 139</p> <p>1 A. We may have. It may have been in an e-mail</p> <p>2 request, I would have to go back to the electronic to</p> <p>3 find out.</p> <p>4 Q. The last paragraph from the meeting minutes from</p> <p>5 August 18th, 2011, makes a reference to Eber CT, and</p> <p>6 your request for the operating statement relating to</p> <p>7 Eber Ct. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall discussing Eber CT at that</p> <p>10 meeting?</p> <p>11 A. The discussion at that time would have been</p> <p>12 trying to find out what had been presented to us, and</p> <p>13 what Eber CT was. We were aware that there was</p> <p>14 lending on the commercial side to Eber, but trying to</p> <p>15 determine exactly where that corporate structure fit</p> <p>16 into our organization it was unclear, and that's why</p> <p>17 we had not specifically requested until then, the</p> <p>18 information on Eber CT.</p> <p>19 Q. So, you at least heard the name Eber CT during</p> <p>20 that meeting? You weren't entirely sure where Eber</p> <p>21 CT fit into --</p> <p>22 A. The Corporation.</p> <p>23 Q. -- the Corporation, but you remember discussions</p> <p>24 about that entity, Eber CT?</p> <p>25 A. As I sit here today remembering it, I believe I</p> | <p style="text-align: right;">Page 141</p> <p>1 agree that there was a ratification of the loans, you</p> <p>2 didn't recall a vote taking place. Given that</p> <p>3 testimony, did you ever make any type of request to</p> <p>4 amend or correct these meeting minutes, to better</p> <p>5 reflect what you recall taking place?</p> <p>6 A. I did not.</p> <p>7 Q. Was there a reason that you didn't?</p> <p>8 A. Probably the only reason would be, in our mind,</p> <p>9 at that point it wouldn't matter because there</p> <p>10 appeared to be conflicting roles that were taking</p> <p>11 place during the minute taker and what we were doing.</p> <p>12 The corporate portion of the meeting is really what</p> <p>13 was being recorded here, and, you know, I think there</p> <p>14 was an attempt to bring in the trustee, the corporate</p> <p>15 trustee, who had previously indicated that they were</p> <p>16 not managing this particular asset from a financial</p> <p>17 standpoint, but to bring us in to make it look like</p> <p>18 we were agreeing to that.</p> <p>19 Q. Given that dynamic, or that dynamic as you just</p> <p>20 described it, would it be all the more reason to make</p> <p>21 sure, on behalf of Canandaigua National Bank, that I</p> <p>22 disagree with certain aspects of these meeting</p> <p>23 minutes?</p> <p>24 MR. BROOK: Objection to form.</p> <p>25 A. I would say in retrospect, yes.</p> |